

**Parker-Davis Project Firm Electric Service Contract Draft Amendment
Responses to Comments
Received On or Before October 27, 2003**

Comment: A 60-day period will be necessary for Parker-Davis Project (P-DP) Firm Electric Service (FES) contractors to execute their contracts.

Response: Western will ensure that a minimum of 60 days time period is available to the contractors for execution of the amendment.

Comment: Western has been asked to collect requests regarding the draft contracts and provide a question-and-answer response format.

Response: Western will respond to questions and comments in a question-and-answer format to be mailed to all FES contractors, and also to be posted to the external website. As new comments are received, the comments and responses will be added and the website will be updated. In the initial mailing, the contractors will be asked to indicate whether or not they have internet access. For those who do not have internet access, Western will fax subsequent additions to this document.

Comment: How does Western envision that the billing and payment process will work under the FES contract? How will the payments be allocated on an advance basis? By schedule submitted by the contractors?

Response: It is Western's intention that the FES contractors will pay the amount of their power bill as an advance prior to the month in which they receive their firm electric service. The advance funds received will be allocated to Western and Reclamation in accordance with the cost apportionment shown in the Parker-Davis Project power repayment study. The firm electric service power bill will show a credit for the amount of funds that have been advanced.

Comment: How will Western weave in advance funding under the Advancement of Funds (AOF) Contract, Reclamation's Contract No. 8-CU-30-P1148 and Western's Contract No. 98-DSR-10870? The section 6 language of the P-DP FES contract does not take into account advancements from other sources.

Response: The FES Contract and the AOF Contract are mutually exclusive sources of funding. The AOF Contract includes provisions which preclude duplicate funding obligations under the sections that provide for calculation of Reclamation's and Western's Net Advance Funding Requirements. Under these sections, the total funding obligation is decreased by the amount of advance funding the Firm Electric

Service Contractors are providing outside of the AOF Contract. The sum of the funding received by Western and Reclamation under the FES Contract, the AOF Contract, or other contractual arrangements for funding which may be established in the future, will be equal to 100% of the revenue requirement as set forth in the P-DP power repayment study. The credits shown on the firm electric service power bill will indicate the funding source of the credits, whether that is the AOF Contract, the FES Contract, or other sources.

Comments: How will the project cash flow requirements be accommodated?

Response: The AOF Contract provides for funding schedules that reflect cash flow requirements. To the extent that a line item or costing unit is advance funded through the AOF Contract, the cash flow requirements for the line item or costing unit will be shown on the funding schedule. If a line item or costing unit is advance funded through the FES Contract, the amount of the payment in advance will be equal to the amount of the power bill. The line items or costing units advance funded through the FES Contract will be those where there is no need for cash flow accommodation.

Comment: Western made a comment in the October 1, 2003 presentation that the AOF contract is “burdensome and onerous”. Explain how the AOF contract is “burdensome and onerous”.

Response: Western manages and administers numerous contracts which require advance funding, one of which is the AOF Contract. There are several unique provisions in the AOF contract that result in unique administrative processes that are time intensive and costly for both Western and Reclamation. Examples of these administratively burdensome processes include, but are not limited to, the following:

- The requirement to track expenses rather than obligations.
- The \$10,000 limit for movement between budget line items for Reclamation and costing units for Western.
- The requirement to present Funding Plans three years in advance of when the funds will actually be needed. Presentation of information this far in advance is an educated guess at best.
- Subsequent explanation and updates to the ten-year plan and funding request when the educated guesses made far in advance turn out to be different than the current needs.

Comment: The P-DP contractors have asked Western to provide examples of advance funding arrangements which Western does not consider to be administratively burdensome.

Response: Western has posted to the external website its advance funding arrangement with the Arizona Power Authority to pay for transmission services in

advance. Upon request, those contractors without internet access may receive copies either by fax or by mail.

Comment: Section 11.15 of the AOF Contract states in part that “If Reclamation or Western intend to seek additional funds from other sources of funding, ... the Firm Electric Service Contractors shall be responsible to repay only those federal appropriations which are obtained by Reclamation or Western for the Parker-Davis Project which are included in the Parker-Davis Project power repayment study and which are subject to the appropriate power rate process as provided by law.” For P-DP FES Contractors who are signatory to the AOF Contract, does section 11.15 of the AOF Contract limit these Parties’ repayment obligation to only additional funds from federal appropriations?

Response: Section 11.15 of the AOF Contract cannot be read in isolation, but rather, the AOF Contract must be read as a whole. In particular, Section 7.1 of the AOF Contract provides that the AOF “...Contract is subject to all applicable federal and state laws, and nothing [therein] shall be construed to alter, amend, or affect existing laws or relieve any Party of any duties or liabilities set by those laws, including, without limitation, laws relating to the allocation of costs for repayment by Direct Parker-Davis Project Power Recipients.” In addition, Section 7.3 of the AOF Contract states that “No provision of this Contract shall be construed as obligating any of the Parties to expend funds or enter into any contract or other obligation for future payment of money in excess of amounts appropriated or authorized by law for that purpose or supplied for that purpose by any other funding mechanism available to that Party.” The statutory authorities which allow both Reclamation and Western to accept funds from sources other than appropriations state that these funds “...shall be available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes.” Accordingly, the Contractors’ obligation to repay “appropriations” under Section 11.15 includes contributed funds that in accordance with the Contributed Funds Act and the 1928 Interior Department Appropriations Act shall be used as if appropriated.

Western is required to recapture project costs through inclusion in the rate. Since implementation of the AOF Contract in FY 1999, Western and Reclamation have received advance funding from Department of Defense P-DP FES contractors outside of the AOF Contract. These advance funds from the DOD entities pay for performance of work and purchased items that are included in the power repayment studies and are being paid for by all Parker-Davis Project FES Contractors, including those who are signatory to the AOF Contract. It was never intended that the AOF Contract would create a super preference class of customers that are relieved of repayment obligations as provided by existing laws.

Comment: Explain how this process would be scheduled into the normal appropriations cycle that Western uses, and whether the contract should have a provision in it designating the initiation of advance funding.

Response: Western will implement advance funding under the FES Contract at the beginning of the fiscal year following execution of the FES amendment.

Comment: What is the reason for the amendment becoming effective immediately, particularly the advance funding provision?

Response: An immediate effective date for the contract extension amendment, in particular the advance funding provisions, will give Western and the existing P-DP FES Contractors the opportunity to gain experience and work through the bugs before a whole new crop of P-DP FES customers, as determined by allocation of the 17 MW resource pool, begin taking firm electric service from the Parker-Davis Project as of October 1, 2008.

Comment: Is there specific authority for Western to be able to “mandate” advance funding requirements?

Response: Western’s broad general authority to make contracts includes the power to choose with whom and upon what terms the contracts will be made, including the authority to require advance funding. The other party to a contract has the ability to choose whether or not to accept the contractual terms and conditions. As such, the acceptance of advance funding is voluntary since an FES Contractor can choose to not sign the contract offer.